IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 180 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAKESHKUMAR KACHRABHAI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 180 of 2004

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR RM CHAUHAN, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 21/12/2004

ORAL JUDGEMENT

1. Learned Advocate Ms.DR Kachhavah for the

petitioner and learned APP Mr.R.M.Chauhan for the respondent State were heard. RULE. Waived by learned APP Mr. Chauhan for the respondent State. Learned counsels for the parties requested to hear this matter finally and so the matter is decided finally.

2. Present petitioner an accused of Prohibition Crime Register No. 5058 of 2003, registered before Vasad Police Station under Sections 66(1)(B), 65 AE, 81, 83 and 116(B) of the Bombay Prohibition Act, and the owner of vehicle i.e. Maruti Zen bearing Regn No.GJ-9H-790 preferred an application before learned Judicial Magistrate, First Class, at Anand, vide Exh.-3 to deliver the custody of the said vehicle to him during the trial under Section 451 of the Code of Criminal Procedure.

3. Even as per the case of the prosecution, one Bakul Hariprasad Pancholi accused in the said case came to be arrested red-handed in a raid with the above said vehicle which contained prohibited liquor and two number plates inside the car denoting different numbers than the registration number of the said car. Learned Magistrate was pleased to reject the application on the ground that, firstly, the applicant - present petitioner was absconding accused in the said case and that since false number plates were found from the car and prohibited liquor was found, there was likelihood of using the vehicle in crime again. Present petitioner being aggrieved by the said order delivered by the learned JMFC, Anand, on 25th of August, 2003, below Application Exh.3, preferred a Revision Application being Criminal Revision Application No. 44 of 2003 in the Court of Sessions at Kheda, which also came to be rejected by learned Additional Sessions Judge, Camp at Anand, vide his order dated 16th of January, 2004, on the same grounds that the vehicle was used in the crime, false number plates were found from the car, the accused was absconding and that the application under Sections 99 and 100 of the Prohibition Act was pending before the learned JMFC as filed by the State for the confiscation of the said vehicle. Learned Additional Sessions Judge came to the conclusion that the facts of the case were not covered by the decision of the Supreme Court in the matter of SUNDERBHAI AMBALAL DESAI vs. STATE OF GUJARAT, as reported in 2003 (3) GLR 1337.

4. True it is that, when second revision application is barred, the court exercising powers under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India, would not interfere when remedy of revision has already been exhausted by the

applicant though there is a very limited scope in such matters to interfere to correct the apparent error of law and prevent the grave miscarriage of justice.

5. At this prima facie juncture, it cannot also be said that the said vehicle was not involved in the crime, and that there was no likelihood that the said vehicle shall not be used in violation of law. It also cannot be said that false number plates were not found from the said vehicle. Then the question arises that in these circumstances, whether under Sections 451 and 457 of the Code of Criminal Procedure Code, interim custody of a vehicle, can be handed over to a person accused of a crime under Prohibition Act where allegation is, the vehicle was used though he was not present at the time of raid.

6. It is necessary therefore to seek guidance from the decision of the Apex Court in the matter of SUNDERBHAI AMBALAL (supra) where in para 17 of the decision, the Apex Court observed as under :

> "In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles."

7. In the said decision, the Apex Court mandated guidance for the property lying at Police Station and court, for a long period during trial. The Apex Court laid down the ratio that such a situation must be avoided and, therefore, the Supreme Court was pleased to observe directions with regard to valuable articles and currencies as well as direction with regard to vehicles as noted above in para-17.

8. The ratio of the Apex Court in the above matter flows from phrase "whatever be the situation" in respect of vehicles, in such situation. There may be cases, in which the court may have genuine apprehension that if the vehicle is entrusted to temporary custody of any person, there was likelihood of committing breach of law. As per the decision of the Supreme Court noted above, this situation can be taken care of by proper conditions. Meaning thereby that, with respect to the vehicle, whatever be the situation of circumstances, vehicle be

handed over to proper interim custody, on proper condition. This ratio laid down by the Apex Court appears not to have been discerned properly either by learned JMFC or learned Additional Sessions Judge, Camp at Anand, and therefore though second revision is barred, interference is required in this Special Criminal Application and in exercising powers by virtue of Section 482 of the Code of Criminal Procedure.

9. In this view of the matter, this Application is required to be allowed and muddamal vehicle i.e. Maruti Zen bearing Regn.NO. GJ-9H-790 lying with the Vasad Police Station be handed over to the petitioner during trial on the following terms and conditions :

(i) That the petitioner shall submit surety of the amount of Rs. 3 lacs to the satisfaction of the learned Trial Court.

(ii) That the said vehicle shall be preserved in good condition by the petitioner and that the said vehicle shall not be transferred, alienated or any way the petitioner shall not part with the possession of the said vehicle.

(iii) That the petitioner shall always accompany with the said vehicle whenever it is put to motion.

(iv) That the said vehicle shall be produced before the Court as and when it is required by the Trial Court even in pursuance of application filed by the State under sections 99 and 100 of the Bombay Prohibition Act.

(v) That the petitioner shall not use the said vehicle for any illegal purpose and shall not permit the user thereof for illegal purpose.

(vi) That on breach of any of the above conditions, the Investigating Officer shall be at liberty to re-seize the said vehicle.

10. In the result the petition is allowed. Rule is made absolute to the above said extent. DS permitted.

(J.R. Vora, J.)

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